

GUIDELINES
ON THE USE OF
CONSULTANTS
BY
ASIAN
DEVELOPMENT
BANK
AND
ITS
BORROWERS

The *Guidelines on the Use of Consultants* by the Asian Development Bank and its Borrowers contained in this booklet supersede the guidelines governing the use of consultants by the ADB and its borrowers approved in February 1968 and subsequently revised in May 1973, April 1979, and October 1998.

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I. INTRODUCTION

1.01. (a) The services of consultants, both individuals and firms, in various fields are used by the ADB in carrying out its operations and by the ADB's borrowers* in carrying out ADB-financed projects. The assistance of consultants is needed by the ADB and its borrowers to ensure maximum efficiency and economy in the preparation, construction and operation of projects and in the undertaking of related activities. Efficiency and economy in any such activity can be achieved through careful planning, designing and supervision and it is important to utilize the services of consultants for this purpose whenever necessary. Consultants to be engaged by the ADB and its borrowers must be fully competent for the work to be assigned to them.

(b) The technical qualifications of consultants to perform the required services are, therefore, the most important criteria in the selection of consultants by the ADB and its borrowers. Subject to this requirement, the ADB will ensure that consultants used by the ADB and its borrowers represent the ADB's member countries in a reasonably balanced way. It is also the ADB's policy to encourage the use of consultants from developing member countries and to promote the development of domestic consulting professions.

1.02. This booklet sets forth the ADB's general policies and procedures concerning the use of consultants by the ADB and its borrowers. The provisions of these Guidelines should apply in all cases where the ADB uses consultants in its operations. The provisions should also apply,

* References in this booklet to "borrower" include the agency responsible for execution of an ADB-financed project where the borrower does not directly execute the project.

except as otherwise agreed by the ADB, in all cases where consultants are used by the borrower for an ADB-financed project. This booklet includes revisions to the earlier versions of the Guidelines.

1.03. Consultants to be engaged by the ADB or its borrowers may, depending on the circumstances, be individual consultants or consulting firms. The distinction between the use of "individual consultants" and the use of a "consulting firm" is drawn in this booklet depending on whether the selection of consultants is made for a particular assignment on the basis of the qualifications and experience of individual experts to be engaged or on the basis of the competence and experience of a consulting firm to be engaged as well as the personnel and facilities to be provided by it. "Individual consultants" in this sense may be engaged directly or through an organization (see paragraph 8.05 below).

1.04. Consultants to be financed by the ADB from its ordinary capital resources must be engaged from any of the ADB's member countries. Consultants to be financed by the ADB from its Special Fund resources must be engaged from any of the eligible source countries specified by the ADB from time to time.

1.05 It is the ADB's policy to require that borrowers (including beneficiaries of ADB loans), as well as consultants under ADB-financed contracts, observe the highest standard of ethics during the selection process and in execution of such contracts. In pursuance of this policy, the ADB:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) "corrupt practice" means behavior on the part of officials in the public or private sectors by which

they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such officials in the selection process or in contract execution; and

- (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the borrower, and includes collusive practices among consultants (prior to or after submission of proposals) designed to deprive the borrower of the benefits of free and open competition;

(b) will reject a proposal for award if it determines that the consultants recommended for award have engaged in corrupt or fraudulent practices in competing for the contract in question;

(c) will cancel the portion of the loan allocated to the contract for the consulting services if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the borrower or of a beneficiary of the loan during the selection process or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to the ADB to remedy the situation.

(d) will declare consultants ineligible, either indefinitely or for a stated period of time, to be awarded an ADB-financed contract if it at any time determines that the consultants have engaged

in corrupt or fraudulent practices in competing for, or in executing, an ADB-financed contract; and

(e) will have the right to require that, in contracts financed by an ADB loan, a provision be included requiring consultants to permit the ADB to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the ADB.

1.06 With the specific agreement of the ADB, a borrower may introduce, into the invitations for proposals for large contracts financed by the ADB, an undertaking of the consultants to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the invitations for proposals. A footnote shall also be inserted into documents where such a pledge has been inserted noting that it has been placed there at the request of the borrower.

1.07 When the contract is to be financed wholly or partly by the ADB, the contract documents shall include an undertaking by the consultants that no fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the proposal, have been given or received in connection with the selection process or in the contract execution.

II. USE OF CONSULTANTS BY THE ADB

2.01. The ADB may use consultants for technical assistance activities which are financed by the ADB from its own resources or which, although financed by another institution, are executed by the ADB on behalf of such other institution. The ADB may also use consultants to supplement its own staff in carrying out its operations. When the ADB uses consultants in any such case, the consultants will be selected and engaged by the ADB. The duties

of consultants are defined in the terms of reference which, in case of a technical assistance project, are prepared in collaboration with the recipient entity. (see paragraph 6.02(b) below).

2.02. After termination of their engagement, such consultants may be required to abstain from any subsequent work on the same project, if so decided by the ADB.

III. USE OF CONSULTANTS BY BORROWERS

3.01. Borrowers from the ADB may use consultants to obtain assistance in carrying out projects financed by the ADB. The need for consultants in a particular ADB-financed project will be carefully considered by the ADB and the borrower at the time of appraisal of the project or subsequently as circumstances warrant. The ADB may, where necessary, require borrowers to engage consultants.

3.02 (a) When borrowers use consultants, they will be responsible for the selection, engagement and supervision of the consultants. The ADB will, however, have to be satisfied that the functions and responsibilities to be assigned to the consultants are adequately defined, that the consultants are competent for the assignment, that the conditions of their contract are satisfactory and that the contract is duly performed.

(b) To achieve this, the ADB may hold discussions with the borrower and the consultants. If requested by the borrower, the ADB will allow its staff to participate and assist in the negotiation of a contract with consultants. During any such discussions, the ADB would make clear any requirements which it may have in regard to the work, and satisfy itself that the borrower will give the consultants adequate authority to discharge their responsibilities and carry out the terms of their contract.

(c) The ADB's involvement, pursuant to the foregoing provisions of this paragraph, in the selection and engagement of consultants by a borrower will be determined in detail in each case by agreement between the ADB and the borrower.

IV. USE OF DOMESTIC CONSULTANTS AND CONSULTANTS FROM DEVELOPING MEMBER COUNTRIES

4.01. It is the ADB's policy to encourage the use of domestic consultants* and consultants from other developing member countries where such consultants are found to be qualified to perform the work.

4.02. The consultants to be considered for a particular assignment should represent member countries of the ADB in a reasonably balanced way (see paragraphs 6.03(b) and 8.06 below). Within that context, the ADB and its borrowers should give special consideration to the use of domestic consultants and consultants from other developing member countries to the extent possible, subject to the required technical qualifications and standards being met.

4.03. (a) Consulting firms from developed member countries who have been invited to submit proposals for a particular assignment are encouraged to collaborate with domestic consultants or consultants from other developing member countries who are capable of providing part of the services required. In cases where all other factors affecting evaluation are rated equal, preference will be given, in the evaluation of proposals, to firms proposing such a collaboration arrangement, as well as to domestic consultants

* The term "domestic consultants" as used in this booklet refers to consultants from the developing member country of the ADB in which the work is to be carried out.

or consultants from other developing member countries who alone have submitted proposals.

(b) In projects likely to involve a collaboration arrangement between domestic consultants and a foreign consulting firm, the borrower or the recipient entity should make available to the selected foreign firms and to the ADB a list of suitable domestic consultants together with their qualifications and it should be ensured that all selected foreign firms are allowed to propose a collaboration arrangement with any of such domestic consultants.

(c) In cases involving a collaboration arrangement between a consulting firm from a developed member country and domestic consultants or consultants from another developing member country, the services to be provided by the domestic consultants or the consultants from the other developing member country should be clearly defined and set forth in the proposals and in the contract.

V. SERVICES OF CONSULTING FIRMS

(1) General Responsibilities of Consulting Firms

5.01 The services of consulting firms used by the ADB and its borrowers often include:

(i) pre-investment studies: including studies to establish investment priorities and sector policies, to assess governmental operations and institutions for project formulation and implementation, and to determine the feasibility and justification of investment projects;

(ii) detailed engineering and design: including preparation of detailed designs,

specifications, cost estimates and tender documents; and

(iii) project implementation: including supervision of project execution, assistance in project operation for an initial period, execution of training programs, and institution building or financial studies for the successful implementation of projects.

5.02. The engagement of consulting firms will have to be based on the suitability of their qualifications for the assignment and on their capacity to render their services (inclusive of recommendations to be made and specifications and designs to be prepared) in a demonstrably impartial manner and in keeping with the ADB's requirements regarding international competitive bidding.

5.03. A consulting firm engaged to prepare final designs and specifications is responsible for the accuracy and suitability of its work. The contract with such firm should make appropriate provisions in this regard. A consulting firm engaged for other purposes will ordinarily act as an adviser to the borrower on all technical problems and may be vested by the borrower with authority to make final decisions within prescribed limits.

(2) Engineering Firms Related to Contractors or Manufacturers

5.04. The ADB and its borrowers frequently use, out of various kinds of consultants, firms of consulting engineers. Such engineering firms usually fall into any of the following categories:

(i) firms of independent consulting engineers;

(ii) firms which combine the functions of consulting engineers with those of contractors, or

which are associated with, affiliates of, or owned by contractors;

(iii) firms of consulting engineers which are affiliates of manufacturers, or manufacturing firms with departments or design offices offering services as consulting engineers.

5.05. Firms in categories (ii) and (iii) of paragraph 5.04 above will normally be acceptable only if they agree to limit their role to that of consulting engineers and to disqualify themselves, their associates and their affiliates for work in any other capacity on the same project (including bidding on any part of the project). In addition, in the case of category (iii) firms, it would be necessary to ensure that the specifications to be prepared by them as consulting engineers will be impartial and can meet the requirements of competitive bidding, whether international or local as the case may be. Therefore, only in special circumstances and with clear justification, after taking into account the nature of the services performed as consultants, may the ADB and the borrower jointly agree, in the course of pre-qualification procedures, to permit category (ii) and (iii) firms, their associates and their affiliates to tender for participation in a project either as a contractor or as a supplier.

(3) Continuity of Consulting Services

5.06. (a) The duties of consulting firms depend upon the circumstances in each case. Such duties may include all three categories of functions mentioned in paragraph 5.01 above: namely, (i) pre-investment studies; (ii) detailed engineering and design, and (iii) project implementation. In some cases, however, pre-investment studies, mentioned in category (i), may have been carried out before the project is submitted to the ADB for consideration. In such case the consultant's work will be limited to categories (ii) and (iii).

(b) If a consulting firm has carried out pre-investment studies for a project, mentioned in category (i), there may be advantages in appointing the same firm to carry out detailed engineering and project implementation, mentioned in categories (ii) and (iii).

(c) It is normally essential that detailed engineering and design, mentioned in category (ii), and project implementation, mentioned in category (iii), be carried out by the same firm.

VI. PROCEDURES FOR SELECTION OF CONSULTING FIRMS

(1) Introduction

6.01. Except as otherwise provided in these Guidelines, and except as otherwise agreed by the ADB in a particular case, the procedures set forth in the following paragraphs of this Section shall apply in the selection of consulting firms by the ADB or its borrowers. The ADB considers that, in most cases, the general policies and procedures concerning the engagement of consulting firms can best be addressed through competition among qualified shortlisted firms in which the selection is based both on the quality of the proposal and the cost of the services to be provided (quality-and-cost-based selection [QCBS]). QCBS is the ADB's preferred selection method for consulting firms; however, in some cases, QCBS is not the most appropriate method of selection. For complex or highly specialized assignments, selection is usually based on the quality of the proposal alone and, in such cases, quality-based selection (QBS) may be used. The proposed selection method will be specified in the ADB's project document and, if it is proposed that QBS be used for selection of consulting firms, adequate justification must be provided.

(2) Terms of Reference

6.02. (a) Before the actual process of selection of a consulting firm starts in each case, the objective and scope of the proposed work and the functions and duties to be assigned to the consultants should be clearly and adequately defined in the "terms of reference". Normally, the terms of reference are supplemented by additional information such as a summary of data, facilities and services which will be provided to the consultants by the borrower in the case of a loan project and by the recipient entity in the case of a technical assistance project.

(b) The ADB and the borrower or the ADB and the recipient entity, as the case may be, should collaborate in the preparation of terms of reference and agree thereon in each case.

(3) "Short List" of Consulting Firms

6.03. (a) The selection of a consulting firm for a particular assignment usually begins with the preparation of a reasonably sized list of firms claiming expertise in the field.

(b) On the basis of a detailed examination of the experience and capabilities of the firms included in such a preliminary list, a shortlist of firms, to be invited to submit proposals for the assignment, should be prepared. The shortlist should normally consist of 5-7 firms considered to be the most qualified and suitable to receive invitations for proposals, and the firms to be included in such a list should represent the ADB's member countries in a reasonably balanced way without there being any rigid shares.

6.04. When the borrower prepares a shortlist of consulting firms for an ADB-financed project:

(a) The borrower may obtain information about qualified firms from associations of consulting firms, diplomatic missions of the ADB's member countries, the borrower's own diplomatic missions, and the ADB. When the ADB provides such information to a borrower, the ADB will not make specific recommendations on the names of consulting firms which may be included in a shortlist.

(b) The borrower should submit to the ADB the names of consulting firms proposed to be included in the shortlist before the invitation for proposals is issued to the short-listed consulting firms, so that the ADB may satisfy itself that the proposed firms are qualified to perform the work and that there is a reasonably wide field of choice of consultants from different member countries. The ADB retains the right to disapprove firms proposed by the borrower, but will refrain from making specific nominations or suggestions unless the task to be performed is of such an unusual character that only a few qualified firms may be found to accomplish it.

6.05. When the ADB itself selects a consulting firm for a technical assistance project, the names of firms to be included in the shortlist will be submitted to the recipient entity for comment and statement of any objections before the invitation for proposals is issued to such firms.

(4) Invitation for Proposals

6.06. After preparing a shortlist of consulting firms pursuant to paragraphs 6.03-6.05 of this section, an invitation will be issued to the shortlisted firms to submit their proposals.

6.07. The invitation for proposals should include the terms of reference (see paragraph 6.02 of this section), a copy of the criteria to be used by the ADB or its borrower to evaluate proposals and any

other supplementary information (which may include estimated person-months) concerning the proposed work and the conditions under which the work is to be performed. When the QCBS method is to be used, the invitation will state that the weight for technical quality will be 80 percent, the weight for cost will be 20 percent, and the minimum qualifying evaluated score a technical proposal receives must be 75 percent of the maximum available for technical qualifications.

6.08. The invitation for proposals will clearly indicate the selection method to be used. When QCBS is used, consulting firms are required to submit their technical and financial proposals at the same time but in separate sealed envelopes. When QBS is used, as price will not be used as a selection criterion, firms only submit their technical proposals and the financial terms will be discussed and agreed during contract negotiations with the first-ranked firm.

6.09. The consulting firms should furnish, as a part of their proposals, (i) estimates of the time and person-months required, both in the field and in the home office, to comply with the terms of reference; and (ii) the names and qualifications of personnel to be assigned to the work. Sixty (60) days are normally allowed for preparation and submission of proposals.

(5) Receipt and Evaluation of Proposals

6.10. (a) For QCBS, the firms are required to submit technical and financial proposals at the same time (see paragraph 6.08). Any proposal received after the closing time for submission of proposals will be returned unopened, and no amendments to the technical or financial proposals will be accepted after the deadline. The envelopes containing the technical proposals will be opened by the consultants selection committee after the closing time for submission of proposals. The

financial proposals will remain sealed and safely stored until they are opened publicly. In the case of the ADB, the chairman of the consultants selection committee will be responsible for safe storage of the unopened financial proposals. Any proposal received after the closing time for submission of proposals will be returned unopened.

(b) The technical proposals received in a response to the invitation should be carefully analyzed and compared with respect to plans of approach; schedules; experience and capabilities of personnel to be assigned; the quality of supervisory leadership to be furnished; attention to be given by principals of the firm; facilities of the home office; and the assistance, if any, that may be available from others. Familiarity with the language and customs of the country in which the work is to be performed should be given due consideration.

(c) The aim in evaluating proposals should be to select the most suitable technical proposal on the basis of technical qualifications to perform the work, rather than the best known or the most experienced firm. Of the various factors, the primary emphasis should be given to the personnel assigned to the work.

(d) Under QCBS, after the technical quality is evaluated, firms whose technical proposals did not meet the minimum qualifying score or were considered nonresponsive to the invitation requirements and the terms of reference, will be advised upon completion of the selection process and their financial proposals will be returned unopened. Simultaneously, firms that have secured the minimum qualifying technical score will be advised of the location, date, and time set for opening of financial proposals. Adequate notice will be given to allow interested consultants

or their representatives to attend the opening of the financial proposals.

(e) The financial proposals submitted under QCBS will be opened publicly in the presence of representatives of the firms that choose to attend. The name of the firms, the technical quality scores, and the proposed prices will be read aloud and recorded when financial proposals are opened.

(f) When QCBS is used, the consultants selection committee will then review the financial proposals and any computational errors will be corrected. To compare proposals, the costs will be converted to a single currency using the selling (exchange) rates for the currencies quoted by an official source, (such as ADB or the central bank in the country). The invitation will specify the source of the exchange rate to be used. For the purpose of evaluation, "cost" will exclude local taxes, but include all other costs involved in performing the services. The financial proposal with the lowest evaluated cost will be given a financial score of 100 percent and other proposals will be given financial scores that are inversely proportional to their prices.

(g) For QCBS, the total score will be obtained by weighting the technical and financial scores and adding them (paragraph 6.07).

(6) Contract Negotiations

6.11. (a) When QCBS is used, negotiations will include discussions of the terms of reference, the methodology, staffing, and the borrower's inputs. But these discussions will not substantially alter the terms of reference attached to the invitation. Proposed unit rates for remuneration of nominated experts and other expenses will not be negotiated, since unit rate cost has been a factor in the selection process.

(b) When QBS is used, after selection of a firm (or a joint venture of firms) considered to be the best qualified for the assignment has been made, negotiations to agree the financial and other terms of the contract will be opened without delay. In the contract negotiations, it will be possible to take into consideration suggestions made by the selected firm, which frequently result in revisions to the scope of work; in such cases, meaningful negotiation of the financial terms can be started only after agreement has been reached on the scope of work.

(c) The representatives of the selected firm who will conduct the negotiations on behalf of the firm must be prepared to discuss its cost estimates and to justify the elements involved, and must have authority to conclude a binding agreement.

(d) If it is not possible to reach agreement, negotiations should be terminated with the concurrence of the ADB and opened with the firm next in ranking (and so on, if necessary, until an agreement is concluded).

6.12. (a) For major contracts for ADB-financed technical assistance projects, for which the ADB itself selects a consulting firm, the representatives of the recipient entity should be invited to participate in the negotiations.

(b) When the borrower negotiates a contract with a consulting firm for an ADB-financed project, the ADB will, as stipulated in paragraph 3.02(b), allow its staff to participate and assist in the negotiations, if so requested by the borrower.

(7) Special Selection Procedures

6.13. The application of the general procedures for selection of consulting firms set forth in

paragraphs 6.03-6.12 above may be waived by the ADB in exceptional cases if there is adequate justification, such as where only one firm may be invited to submit proposals because of its previous involvement in the same project (see paragraph 5.06 above) or in a closely related project.

VII. THE ADB'S FILES ON CONSULTING FIRMS AND INDIVIDUAL CONSULTANTS

7.01. The ADB maintains files of information concerning the capabilities and experience of a large number of consulting firms and individual consultants as supplied by them. Such information is used by the ADB in making its own selection of consulting firms or individual consultants (see paragraph 2.01 above). Such information also provides a basis for the ADB's assessment of the acceptability of firms or individuals proposed or chosen by borrowers (see paragraph 3.02 above).

7.02. The fact that the ADB has been supplied with information about a firm or individual does not indicate that the ADB would engage such firm or individual for work connected with the ADB or that the ADB will approve the appointment of the firm or individual for any specific project. In other words, the ADB has no list of approved consulting firms or individual consultants.

VIII. INDIVIDUAL CONSULTANTS

(1) Types of Assignments

8.01. Individual consultants* are generally engaged by the ADB or its borrowers to carry out the following assignments:

* For the distinction between "individual consultants" and "consulting firms" for the purpose of these Guidelines, see paragraph 1.03 above.

(i) To prepare, review, supplement or update feasibility studies.

(ii) To assist the ADB's developing member countries in establishing or strengthening institutions, in carrying out sector studies, or in drawing up development plans.

(iii) To assist ADB staff in carrying out certain specific assignments or to perform any other special services for the ADB.

(iv) To assist borrowers in project implementation.

(2) Selection Procedures

8.02. Except as otherwise agreed by the ADB in a particular case, the procedures set forth in the following paragraphs of this Section shall apply in the selection of individual consultants by the ADB or its borrowers.

8.03. The procedures for selection of individual consultants are simpler than those applicable to the selection of consulting firms (which are set forth in paragraphs 6.01-6.13 above). However, the provisions in paragraph 6.02 above concerning the preparation of terms of reference for consulting firms are also applicable to individual consultants in their selection and engagement.

8.04. In the selection and engagement of individual consultants, due regard should be paid to the ADB's policy of encouraging the use of domestic consultants and consultants from other developing member countries, as set forth in paragraphs 4.01-4.03 above.

8.05. Individual consultants may be engaged directly or through an organization, such as an academic institution, a governmental or international agency or a consulting firm.

8.06. For the selection of individual consultants, a list of a reasonable number of suitable candidates drawn from different member countries of the ADB should be prepared by making use of whatever sources of information are available. The selected candidates may then be contacted to inquire about their interest in and availability for the assignment. The available candidates should then be ranked primarily on the basis of their qualifications and experience, and a contract may be negotiated with the first-ranked consultant. If an agreement cannot be reached, the second-ranked consultant should be contacted (and so on, if necessary, until an agreement is concluded).

8.07. (a) When the ADB selects individual consultants for a technical assistance project, the names of proposed candidates together with their qualifications should be sent to the recipient entity for its concurrence.

(b) When the borrower selects individual consultants for an ADB-financed project, the names of proposed candidates together with their qualifications should be sent to the ADB for its concurrence.

IX. OTHER PROVISIONS

(1) Time for Recruitment of Consultants

9.01. It is important to select and engage expeditiously consultants required for a project in order that the project can be implemented in accordance with the agreed implementation schedule. A delay in the engagement of

consultants usually affects the timely implementation of the project.

9.02. The time required for the engagement of consultants can be reduced if all preparatory work (including the preparation of terms of reference and a list of qualified consultants) is completed at an early stage after the appraisal of the concerned project, so that the actual recruitment of consultants (as described in the first sentence of paragraph 9.03 below) can start immediately after the project has been approved by the ADB.

9.03. The invitation for proposals in the case of consulting firms (see paragraphs 6.06-6.09 above) and the inquiry about the possibility of recruitment in the case of individual consultants (see paragraph 8.06 above) should be sent out only after the approval of the concerned project by the ADB. However, in special cases where there is adequate justification, such recruitment action may be taken before the approval of the project in order to facilitate the timely implementation of the project, provided that such advance recruitment action should separately be approved by the ADB. The ADB's approval of such advance recruitment action would not in any way commit the ADB to approve the project itself subsequently.

9.04. Where a consulting firm is directly to be engaged by a borrower pursuant to the provisions of paragraphs 5.06 and 6.13 above, the borrower will normally be required to complete the negotiation of a contract with the firm within 90 days from the signing of the relevant loan agreement.

(2) Recommendations of Consultants

9.05. Where a borrower, after due consideration of the recommendations or advice furnished by consultants, considers it necessary to deviate from,

or inadvisable to accept, such recommendations or advice, the borrower should ascertain from the ADB whether it has any objection to the proposed action. In such case, the ADB will obtain the consultants' view, normally through the borrower, before deciding on concurrence or otherwise.

(3) Termination of Contract

9.06. Where an existing contract with consultants has to be terminated before the completion of the work, the procedure for replacement of consultants will be decided by the ADB on a case-by-case basis, having regard to the views of the borrower in the case of a loan project.